

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,)
)
 v.)
)
 RICHARD M. SCRUSHY,)
)
 Defendant.)

UNDER SEAL

Case No. CR-03-BE-0530-S

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ENTERED
NOV - 3 2003

RESTRAINING ORDER

The United States has made an *ex parte* application to this Court, pursuant to 21 U.S.C. § 853(e)(1)(A), for a restraining order to preserve the availability of certain property that is subject to forfeiture in the above-styled criminal action. Upon consideration of the Government's application, its supporting materials, and the Indictment of Richard M. Scrushy, it appears to the Court that there is reasonable cause to enter a restraining order to preserve the subject property based upon the following:

1. That on October 29, 2003, a federal grand jury of this district returned an Indictment against Richard M. Scrushy which included charges of mail fraud, wire fraud, and securities fraud, in violation of 18 U.S.C. §§ 1341, 1343, and 15 U.S.C. § 78, respectively, and conspiracy to commit these offenses, in violation of 18 U.S.C. § 371. Furthermore, said Indictment alleges criminal forfeiture under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), and under 18 U.S.C. § 982(a)(1), of certain property in which defendant Richard M. Scrushy holds an interest. The list of said properties is identified in *Attachment 1*, attached hereto and made part of this Order.

2. That the federal grand jury's Indictment of Richard M. Scrushy, which specifically identified property as being subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. §

2461(c), and under 18 U.S.C. § 982(a)(1), establishes probable cause for the issuance of this restraining order. In addition, the affidavit of Special Agent Charles A. Traywick, Internal Revenue Service-Criminal Investigation (IRS-CI), sets forth additional probable cause sufficient for issuance of the restraining order sought by the Government.

3. That in the event Richard M. Scrushy is convicted of the charges alleged in said Indictment, the subject property would be subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), and under 18 U.S.C. § 982(a)(1).

4. That the need to preserve the availability of the subject property through the entry of the order requested herein outweighs the hardship on any party against whom the order is to be entered.

5. That any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture in accordance with the provisions of federal forfeiture law. Fed. R. Crim. P. 32.2(c).

THEREFORE, IT IS HEREBY ORDERED AND DECREED:

That, effective immediately, defendant Richard M. Scrushy, his agents, servants, employees, attorneys, family members and those persons in active concert or participation with him, and those persons, financial institutions, or other entities who have any interest or control over the subject property are hereby

RESTRAINED, ENJOINED, AND PROHIBITED, without prior approval of this Court and upon notice to the United States and an opportunity for the United States to be heard, from attempting or completing any action that would affect the availability, marketability or value of said property, including but not limited to selling, transferring, assigning, pledging, distributing, encumbering, wasting, secreting, depreciating, damaging, or in any way diminishing the value of,

all or any part of their interest, direct or indirect, in the subject property as identified in *Attachment 2*, which is incorporated herein as part of this Order.

IT IS FURTHER ORDERED that the defendant is required to maintain the present condition of any real or personal property subject to this Order, including timely payment of all mortgage payments, if any, and insurance, utilities, taxes, and assessments until further order of this Court. The Government is hereby authorized to enter said real properties to videotape the condition of real and personal properties in order to verify that said properties are being maintained.

IT IS FURTHER ORDERED that defendant Richard M. Scrushy and his agents, servants, employees, attorneys, family members, and those persons in active concert or participation with him are hereby restrained from the use and enjoyment, either as operator or passenger, of all vehicles, vessels, racing boats and other water craft, aircraft, and other conveyances identified in *Attachment 1* as being subject to forfeiture in this action pending further order of this Court.

IT IS FURTHER ORDERED that any financial institutions holding any accounts subject to this Order shall take no offsets against such accounts. They shall continue to credit any deposits, interest, dividends, or other credits to such accounts in the normal course of business, and such deposits, interest, dividends, and other credits shall be subject to this Order. Payments from bank accounts for automated drafts initiated prior to the date of entry of this Order, and payments upon checks delivered to third parties before the date of entry of this Order are excepted from restraint for ten (10) calendar days from the date of entry of this Order. In addition, upon receiving notice of this Order, each financial institution shall promptly inform the Government as to the account balances at the time of notice, and shall thereafter supplement such information by reporting to the

Government any changes to the accounts, and by responding promptly to requests by the Government for information on the accounts' current status.

IT IS FURTHER ORDERED that any financial institutions holding mortgages on real property subject to this Order shall respond promptly to requests by the Government for information on said mortgages' current status.

IT IS FURTHER ORDERED, pursuant to the provisions of 21 U.S.C. § 853(e)(4), that within ten (10) calendar days of receipt of this Order, defendant Richard M. Scrushy shall repatriate and deposit with the registry of this Court any and all properties subject to this Order located outside of the United States over which he has any direct or indirect interest or control, including but not limited to, all such assets that are directly owned by him as well as all such assets that are indirectly owned by or credited to his benefit through his agents, nominees or business entities controlled by him. Said properties shall be deposited pending trial in the registry of this Court, or with the United States Marshals Service, in an interest-bearing account, if appropriate.

IT IS FURTHER ORDERED that the United States or any other person subject to this Order may seek modifications of this Order if it is deemed necessary by them to preserve their interest in the subject property.

IT IS FURTHER ORDERED that any person subject to this Order shall be permitted to execute a satisfactory performance bond pursuant to 21 U.S.C. § 853(e)(1) as an alternative to the restraint of the subject property. After notice to the United States and an opportunity to be heard, the Court shall determine whether any proposed bond is a satisfactory performance bond.

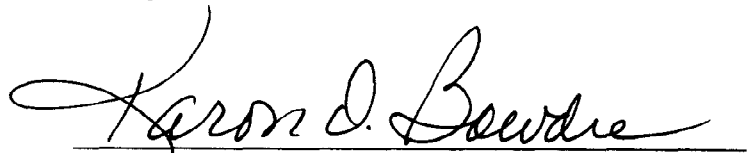
IT IS FURTHER ORDERED that the U.S. Marshal or his designee shall promptly serve a copy of this Restraining Order upon: (1) defendant Richard M. Scrushy; (2) counsel for the

defendant; and (3) all financial institutions and other third parties identified in *Attachment 1* that are subject to this Order. The U.S. Marshal shall then make a return thereon reflecting the date and time of each service.

THIS RESTRAINING ORDER and the government's Application for such shall remain UNDER SEAL until the United States Marshal or his designee has executed this Restraining Order upon all appropriate parties and made the return thereon.

THIS RESTRAINING ORDER shall remain in full force and effect until further order of this Court.

SO ORDERED this the 3rd day of November, 2003.

A handwritten signature in cursive script, reading "Karon O. Bowdre", written over a horizontal line.

KARON O. BOWDRE
United States District Judge